

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

MEGAN BIRD, individually and as
Guardian for minor children C.B.
and K.B,

Plaintiff,

vs.

WESTERN TRANSPORT, LLC and
JOSHUA D. WILLIAMS,

Defendants.

Civ. No. 5:22-CV-5060

COMPLAINT

Comes now the Plaintiff, individually and as Guardian for minor children C.B. and K.B., by and through undersigned counsel, and for her complaint, states and alleges as follows:

PARTIES, JURISDICTION AND VENUE

1.

Plaintiff Megan Bird is domiciled in and is a citizen of the State of South Dakota residing at 12416 Renata Drive, Black Hawk, SD 57718.

2.

C.B. and K.B. are the minor children of Megan and Brandon Bird, and they are citizens of the State of South Dakota residing with their mother and father in South Dakota.

3.

Defendant Joshua Williams ("Williams") resides in Sheridan, WY and is a Wyoming resident. At all times relevant hereto, Williams was driving a semi-

truck and trailer leased to and owned by Western Transport, LLC, of Sheridan, WY.

4.

Defendant Western Transport, LLC (“Western Transport”) is a trucking firm in the business of hauling goods and freight in interstate commerce. Western Transport has its principal place of business in Sheridan, WY, and is a Wyoming corporation. The driver, Williams, was in the course and scope of his employment with Western Transport at all times material to this truck/motor vehicle collision.

5.

This Honorable court has jurisdiction pursuant to 28 U.S.C. sec. 1332(a) in that: (a) the amount in controversy exceeds \$75,000 excluding interest and costs; and (b) the parties are completely diverse; the parties are citizens of different states and no plaintiff is a citizen of the same state as any defendant. Specifically, plaintiffs are citizens of the state of South Dakota, and defendants are citizens of the state of Wyoming.

6.

Venue is proper in this court pursuant to 28 U.S.C. sec. 1391 in that the events giving rise to the claims herein occurred in the western judicial district. The incident which is the subject matter of this complaint occurred on Interstate 90 in Meade County, South Dakota.

NATURE OF THE ACCIDENT

7.

This is a personal injury action on behalf of plaintiffs against Western Transport and its driver Williams for negligently causing injury to the plaintiffs.

8.

As set forth fully below, defendants' negligent actions caused injury to the plaintiffs.

9.

The defendants failed to follow South Dakota state statutes, reasonable safety practices, safety procedures, and safety standards, and those failures resulted in injury to the plaintiffs.

FACTS

10.

On October 25, 2019, at approximately 7:00 a.m., defendant Williams fell asleep while driving a Kenworth truck westbound in I-90 in Meade County, South Dakota. The truck was leased or owned by Western Transport and used for business purposes of Western Transport. When Williams fell asleep driving, the Kenworth he left I-90 and struck a vehicle being driven by Megan Bird and occupied by C.B. and K.B.

11.

When the Kenworth truck that Williams was driving collided with Ms. Bird's vehicle, all of the plaintiffs' sustained serious injuries including permanent injuries to Megan Bird and C.B.

COUNT I - NEGLIGENCE

12.

Plaintiffs incorporates by reference each and every paragraph set forth herein.

13.

Western Transport owns, operates, controls and maintains a fleet of trucks.

14.

Western Transport and its employees are responsible for the control, operation, regulation, safety and maintenance of its trucks.

15.

Western Transport and its employees have a duty to use reasonable care in the control and operation of its trucks.

16.

Western Transport has a duty to monitor and supervise its drivers to ensure that its drivers are not driving fatigued and endangering the public.

17.

Western Transportation allowed a fatigued and unfit employee to drive a Western Transportation truck on a busy interstate highway thus endangering the public.

18.

On October 25, 2019, Western Transport and Williams failed to control its truck and negligently operated such truck in an improper manner,

including but not limited to: (a) falling asleep while operating the truck on I-90; (b) failing to keep the truck under control; (c) leaving the highway without having his vehicle under control; (d) striking plaintiff's vehicle whose driver was in her proper lane of travel; (e) failing to be properly rested to safely drive a large truck; and (f) failure to follow safe driving practices to protect the public from harm.

DAMAGES

19.

The negligence of defendants Western Transport and Williams caused a violent collision between defendant's truck and plaintiff's vehicle, damaging the plaintiffs as follows:

- (a) severe and permanent injuries;
- (b) various temporary injuries;
- (c) inflicting both physical and emotional damage to plaintiffs;
- (d) damage to the property of the plaintiffs;
- (e) medical expenses; and
- (f) aggravation of a pre-existing condition to plaintiff Megan Bird.

WHEREFORE, plaintiff prays for judgment against defendants jointly and severally for all damages incurred to plaintiffs as a result of defendants' negligence, and other relief as justice requires or as this Honorable court deems fit to provide under the principles of law and equity, plus costs and pre-judgment interest.

COUNT II - PUNITIVE DAMAGES

20.

Plaintiffs incorporate by reference each and every paragraph set forth herein.

21.

The Interstate 90 highway between Rapid City, SD and Sturgis, SD, is heavily traveled with numerous highway entrances for the driving public.

22.

Defendant Western Transport, LLC, and its employee Joshua D. Williams knew or should have known that Williams was fatigued to a degree that he could not safely operate a semi on I-90 without the danger of falling asleep. Driver Williams and his employer Western Transport, LLC, chose to continue to drive in said sleep-prone condition.

23.

The conduct of the defendants individually and collectively was a conscious indifference to, or reckless disregard of the health and safety of the driving public nearby on I-90. Defendants knew that the collision between the defendant's truck and the motoring public had a great probability of causing substantial harm to the motoring public. Defendant Williams made a conscious decision to forego sleep and spend more time on I-90 driving the Western Transport truck.

24.

Defendant Western Transport, LLC, made a conscious decision not to

properly monitor Williams and his level of fatigue while driving a Western Transport truck on a public highway.

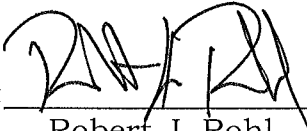
The conduct of the defendants individually and jointly caused foreseeable injuries to the plaintiffs.

WHEREFORE, plaintiffs pray for a judgment of punitive damages against defendants.

TRIAL BY JURY IS HEREBY DEMANDED

Dated this 7th day of July, 2022.

JOHNSON EIESLAND & ROHL
TRIAL LAWYERS

By: 
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Rapid City, SD 57702
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(605) 348-4757 (fax)
Attorneys for Plaintiffs

JS 44 (Rev. 04/21)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Megan Bird, individually and as Guardian for minor children C.B. and K.B.

(b) County of Residence of First Listed Plaintiff Meade County, SD
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Gregory A. Eiesland, Robert J. Rohl
Johnson Eiesland & Rohl
4020 Jackson Blvd., Suite 1
Rapid City, SD 57702 605-348-7300

DEFENDANTS

Western Transport, LLC and Joshua D. Williams

County of Residence of First Listed Defendant Sheridan County, WY
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|---------------------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input checked="" type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 INTELLECTUAL PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. sec. 1332

Brief description of cause:
Personal injury motor vehicle collision

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$
\$75,000

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

July 8, 2022

Gregory A. Eiesland

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____